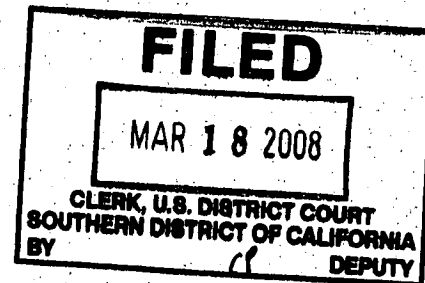


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Email: carol.lee@usdoj.gov

6 Attorneys for Petitioner  
7 United States of America



8  
9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA, )

12 Petitioner, )

13 v. )

14 SEBASTIAN JUAREZ, )

15 Respondent. )

Civil 08 CV 0502 IEG CAB

PETITION TO ENFORCE INTERNAL  
REVENUE SERVICE SUMMONS

16  
17 Petitioner, the United States of America, by and through its  
18 counsel, Karen P. Hewitt, United States Attorney, and Carol M. Lee,  
19 Assistant United States Attorney, petitions the Court for an order to  
20 enforce the Internal Revenue Service ("IRS") summons described below  
21 and, in support thereof, alleges as follows:

22 1. This proceeding is brought at the request of the Chief  
23 Counsel, IRS, a delegate of the Secretary of the Treasury, and at the  
24 direction of the Attorney General of the United States.

25 2. Jurisdiction over these proceedings is conferred upon this  
26 Court by the Internal Revenue Code, 26 U.S.C. §§ 7402(b) and 7604(a)  
27 and 28 U.S.C. § 1345.  
28

1       3. Venue is proper in the Southern District of California  
2 because Sebastian Juarez ("Respondent") resides in this district.

3       4. At all times relevant, S. Silverman, who issued the summons  
4 to Respondent, was a Revenue Officer with the IRS, employed in the  
5 California Area, Long Beach Territory 1, Group 15, of the Small  
6 Business/Self-Employed Division of the IRS in San Diego, California.  
7 See Declaration of Revenue Officer S. Silverman at ¶ 1 ("Silverman  
8 Decl."). Revenue Officer S. Silverman was authorized to issue an IRS  
9 summons pursuant to the authority contained in 26 U.S.C. § 7602, and  
10 Treas. Reg. § 301.7602-1.

11       5. Respondent resides at 3622 Crown Point Drive, San Diego,  
12 California, which is within the jurisdiction of this Court.

13       6. On June 27, 2006, Revenue Officer Silverman issued an IRS  
14 summons directing Respondent to appear before him on July 13, 2006,  
15 at 9:00 a.m. at 880 Front Street, San Diego, California, to give  
16 testimony and to produce for examination the documents and records  
17 specified in the summons. The summons relates to the collection of  
18 Respondent's unpaid assessed personal income tax liabilities for the  
19 tax years 1999, 2000, 2003 and 2004 ("Collection Summons"). Silverman  
20 Decl. at para. 4. On June 28, 2006, Revenue Officer Silverman served  
21 the summons by handing an attested copy of the summons to Respondent.  
22 Silverman Decl. at para. 5. A copy of the summons is attached to the  
23 Silverman Decl. as Exhibit A.

24       7. On July 12, 2006, Respondent contacted Revenue Officer  
25 Silverman and asked that the summons appearance date be changed from  
26 July 13, 2006 to July 20, 2006. Revenue Officer Silverman agreed.  
27 Later, Respondent requested that the summons appearance date be  
28

1 rescheduled again to July 21, 2006, to which Revenue Officer Silverman  
2 agreed. Silverman Decl. at para. 6.

3 8. On July 21, 2006, Respondent appeared before Revenue Officer  
4 Silverman; however, he refused to give any testimony, and he failed  
5 to produce the documents, records, and other information described in  
6 the summons. Silverman Decl. at para. 7.

7 9. On August 29, 2006 and September 8, 2006, Revenue Officer  
8 Silverman spoke to Respondent by telephone and requested that the  
9 documents, records, and other information described in the summons be  
10 provided, however, Respondent continued to fail to do so. Silverman  
11 Decl. at para. 8.

12 10. On October 6, 2006, attorney Mindy S. Meigs of the Office  
13 of Chief Counsel, IRS, sent Respondent a letter and directed him to  
14 appear before Revenue Officer Silverman on October 26, 2006, at  
15 11:00 a.m. at 880 Front Street, Room 3293, in San Diego, California.  
16 Silverman Decl. at para. 9.

17 11. On October 26, 2006, Respondent did not appear before  
18 Revenue Officer Silverman. Silverman Decl. at para. 10.

19 12. On December 19, 2006, Revenue Officer Silverman left a  
20 telephone message for Respondent requesting that he contact him as  
21 soon as possible regarding the summons. On January 3, 2007, Revenue  
22 Officer Silverman and Respondent spoke and agreed to meet in two days,  
23 on January 5, 2007. Revenue Officer Silverman requested that  
24 Respondent bring all the documents, records, and information requested  
25 in the summons. On January 5, 2007, Respondent contacted Revenue  
26 Officer Silverman by telephone and informed him that he would not be  
27 able to attend the meeting and they rescheduled the meeting to  
28 January 9, 2007. However, again, on January 9, 2007, Respondent did

1 not appear for the scheduled meeting, nor did he contact Revenue  
2 Officer Silverman. Silverman Decl. at para. 11.

3 13. On March 2, 2007, Revenue Officer Silverman contacted  
4 Respondent and they arranged to meet on March 7, 2007, and Revenue  
5 Officer Silverman requested that he bring all the documents, records,  
6 and information requested in the summons. Unfortunately, Revenue  
7 Officer Silverman had to cancel the March 7, 2007, meeting due to  
8 illness. On March 7, 2007, a representative of Revenue Officer  
9 Silverman's office left a telephone message for Respondent informing  
10 him that the appointment would have to be rescheduled. On March 8,  
11 2007, Revenue Officer Silverman left a telephone message for  
12 Respondent and requested that he meet with him on March 9, 2007.  
13 Respondent did not return the telephone call and did not meet with  
14 Revenue Officer Silverman on March 9, 2007. Silverman Decl. at para.  
15 12.

16 14. On April 24, 2007, Respondent called Revenue Officer  
17 Silverman and again Revenue Officer Silverman requested that  
18 Respondent provide all the documents, records, and information  
19 requested in the summons. They agreed to meet on May 1, 2007. On  
20 May 1, 2007, Respondent did not attend the meeting nor contact Revenue  
21 Officer Silverman. Silverman Decl. at para. 13.

22 15. All administrative steps required by the Internal Revenue  
23 Code for the issuance of a summons have been taken. Silverman Decl.  
24 at para. 15.

25 16. In order to obtain judicial enforcement of an IRS summons,  
26 the United States bears the initial burden of showing "that the  
27 investigation may be relevant to the purpose, that the information  
28 sought is not already within the Commissioner's possession, and that

1 the administrative steps required by the Code have been followed . .  
2 . . " United States v. Powell, 379 U.S. 48, 57-58 (1964); accord,  
3 United States v. Dynavac, 6 F.3d 1407 (9<sup>th</sup> Cir. 1993). The burden on  
4 the Government is a "slight one" and may be satisfied by presenting  
5 the declaration of the agent who issued the summons and is seeking  
6 enforcement. Id. (citing United States v. Abrahams, 905 F.2d 1276,  
7 1280 (9<sup>th</sup> Cir. 1990) (other citations omitted)). Once a prima facie  
8 case has been made, "a 'heavy' burden falls on the taxpayer" to show  
9 an abuse of the court's process or lack of institutional good faith,  
10 Dynavac, 6 F.3d at 1280, and respondent "must allege specific facts  
11 and evidence to support his allegations." Liberty Financial Services  
12 v. United States, 778 F. 2d 1290, 1292 (9<sup>th</sup> Cir. 1985) (citation  
13 omitted). This matter may be decided on the written record in a  
14 summary proceeding. Hotz v. United States, 96-1 USTC para. 50,097 at  
15 p. 83,363 (E.D. Calif. 1996). To be entitled to an evidentiary  
16 hearing, a respondent must make some showing to refute the United  
17 States' prima facie case or present facts supporting an affirmative  
18 defense. See Fortney v. United States, 59 F.3d 117, 121 (9<sup>th</sup> Cir.  
19 1995).

20 17. Revenue Officer Silverman is conducting an investigation to  
21 determine Respondent's ability to pay the income tax liabilities  
22 assessed against him for the tax years 1999, 2000, 2003 and 2004.  
23 Silverman Decl. at para. 3.

24 18. Section 7602(a) of the Code specifically allows the issuance  
25 of a summons for the purpose of "determining the liability of any  
26 person for any internal revenue tax . . . or collecting any such  
27 liability . . . ." 26 U.S.C. §7602(a). Therefore, Revenue Officer  
28

1 Silverman's investigation is being conducted pursuant to a legitimate  
2 purpose specifically authorized by statute.

3 19. Further, the testimony, books, papers, records, or other  
4 data sought by the summons are not already in the possession of the  
5 IRS, with the exception of the bank statements called for in the  
6 summons which were obtained from third-party record keepers, Silverman  
7 Decl. at para. 15, and the administrative steps required by the Code,  
8 including proper service, have been followed. Id. at paragraphs 4,  
9 5, and 12.

11 20. Respondent is in possession and control of the testimony and  
12 documents concerning the above-described investigation.

13 21. The Internal Revenue Code permits the Secretary to summon  
14 the records of any person "which may be relevant or material" to the  
15 investigation. 26 U.S.C. § 7602(a)(1). It is well-settled that to  
16 satisfy the relevancy requirement set forth in Powell, the United  
17 States must demonstrate that the summoned information may throw light  
18 on the subject of the investigation. Abrahams, 905 F.2d at 1281;  
19 United States v. Arthur Young & Co., 465 U.S. 805, 813-14, n. 11  
20 (1984). This standard necessarily presents a low threshold because  
21 of the inherent difficulties in ascertaining, prior to examination,  
22 how much use the summoned records will be in determining the  
23 collectibility of a person's tax liability and whether a person has  
24 an income tax liability for a specific period. The Supreme Court has  
25 observed that:  
26

27 [a]s the language of §7602 clearly indicates, an IRS  
28 summons is not to be judged by the relevance standards used  
in deciding whether to admit evidence in federal court . .

1 . . . The language 'may be' reflects Congress' express  
2 intention to allow the IRS to obtain items of even  
3 potential relevance to an ongoing investigation, without  
4 reference to its admissibility. The purpose of Congress is  
obvious: the Service can hardly be expected to know which  
data will be relevant until it is procured and scrutinized.

5 Arthur Young & Co., 465 U.S. at 814 (internal citation omitted)  
6 (emphasis in the original). This low threshold of relevance also  
7 follows from the language of the Code, which authorizes the  
8 investigation of persons who "may be liable" for taxes. 26 U.S.C.  
9 § 7601.

10 22. Under the instant circumstances, it is clear that the  
11 summoned material is relevant. The purpose of Revenue Officer  
12 Silverman's investigation is to determine Respondent's ability to pay  
13 the income tax liabilities assessed against him for the tax years  
14 1999, 2000, 2003, and 2004. The Collection Summons seeks, among other  
15 things, " . . . all bank statements, checkbooks, canceled checks,  
16 savings account passbooks, records, or certificates of  
17 deposit . . . ." Silverman Decl. at Exhibit A (Collection Summons).  
18 The documents sought by this summons are clearly relevant to the  
19 determination of the collectibility of Respondent's income tax  
20 liabilities for the years 1999, 2000, 2003, and 2004.  
21

22 23. There is no Department of Justice referral for criminal  
23 prosecution in effect with respect to Respondent. Silverman Decl. at  
24 para. 17.  
25

26 WHEREFORE, the United States requests that:

27 1. The Court enter an order directing Respondent, Sebastian  
28 Juarez, to show cause, if any, why he should not comply with and obey



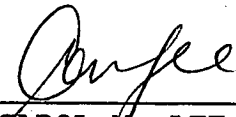
1 the above-described summons (Silverman Decl. at Exhibits A) served on  
2 him personally on June 28, 2006, and each and every requirement  
3 thereof, by ordering the attendance, testimony, and production of the  
4 books, papers, records, and other data required and called for by the  
5 terms of the summons before Revenue Officer S. Silverman, or any other  
6 proper officer or employee of the Internal Revenue Service at such  
7 time and place as may be fixed by Revenue Officer Silverman or any  
8 other proper officer or employee of the Internal Revenue Service.  
9

10 2. That the United States recover the costs and expenses  
11 incurred in maintaining this action against Respondent.

12 3. That the Court grant such other and further relief as may  
13 be required.

14 DATED: 3/18/08

KAREN P. HEWITT  
United States Attorney

16   
17 CAROL M. LEE  
18 Assistant U.S. Attorney  
19  
20  
21  
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24  
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26  
27  
28





# Summons

## Collection Information Statement

In the matter of Sebastian Juarez 5030 San Joaquin Drive San Diego, Ca 92109  
 Internal Revenue Service (Identify Division) Small Business/Self Employed  
 Industry/Area (Identify by number or name) Small Business/Self Employed - California Area  
 Periods Form 1040, U.S. Individual Income Tax Return for the calendar years ending December 31, 1999, December 31, 2000, December 31, 2003 and December 31, 2004.

### The Commissioner of Internal Revenue

To Sebastian Juarez  
 At 5030 San Joaquin Drive San Diego, Ca 92109

You are hereby summoned and required to appear before S. Silverman, an Internal Revenue Service (IRS) officer, to give testimony and to bring for examination the following information related to the collection of the tax liability of the person identified above for the periods shown: Form 1040, U.S. Individual Income Tax Return for the calendar years ending December 31, 1999, December 31, 2000, December 31, 2003 and December 31, 2004.

All documents and records you possess or control regarding assets, liabilities, or accounts held in the taxpayer's name or for the taxpayer's benefit which the taxpayer wholly or partially owns, or in which the taxpayer has a security interest. These records and documents include but are not limited to: all bank statements, checkbooks, canceled checks, saving account passbooks, records or certificates of deposit for the period:

From January 1, 2006 To June 28, 2006

Also include all sources of income, all current vehicle registration certificates, deeds or contracts regarding real property, stocks and bonds, accounts, notes and judgments receivable, and all life or health insurance policies.

IRS will use this information to prepare a Collection Information Statement. We have attached a blank statement to guide you in producing the necessary documents and records.

**Do not write in this space**

### Attestation

I hereby certify that I have examined and compared this copy of the summons with the original and that it is a true and correct copy of the original.

S. Silverman  
 Signature of IRS Official Serving the Summons

Revenue Officer, 33-07950  
 Title

Business address and telephone number of IRS officer before whom you are to appear:

880 Front Street Room 3293, San Diego, Ca 92101 619-615-9538

Place and time for appearance at: 880 Front Street Room 3293, San Diego, Ca 92101

on the 13th day of July, 2006 at 9:00 o'clock A m.

Issued under authority of the Internal Revenue Code this 27th day of June, 2006



Department of the Treasury  
 Internal Revenue Service

[www.irs.gov](http://www.irs.gov)

Form 6637 (Rev.4-2005)  
 Catalog Number 25000Q

S. Silverman  
 Signature of Issuing Officer

Revenue Officer  
 Title

Signature of Approving Officer (if applicable)

Title

**Part A -- to be given to person summoned**



# Certificate of Service of Summons

(Pursuant to section 7603, Internal Revenue Code)

I certify that I served the summons shown on the front of this form on:

Date <u>June 28 2006</u>	Time <u>1:50 PM</u>
-----------------------------	------------------------

How



I handed an attested copy of the summons to the person to whom it was directed.

Summons

Was



I left an attested copy of the summons at the last and usual place of abode of the per to whom it was directed. I left the copy with the following person (if any):

Served

Signature

J. Sullivan

Title

Revenue officer

I certify that the copy of the summons served contained the required certification.

Signature

J. Sullivan

Title

Revenue officer

JS44

(Rev. 07/89)

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

## I (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF - San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

## DEFENDANTS

FILED  
08 MAR 18 PM 3:41  
SEBASTIAN JUAREZCLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIACOUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  
(IN U.S. PLAINTIFF CASES ONLY)BY: CP DEPUTY

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

## (c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

CAROL M. LEE  
880 FRONT STREET, ROOM 6293  
SAN DIEGO, CA 92101-8893  
(619) 557-6235

## ATTORNEYS (IF KNOWN)

'08 CV 0502 IEG CAB

## II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government  
☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PT                         | DEF                        |   | PT                         | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

Petition to Enforce Internal Revenue Service Summons

## V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> Marine	<input type="checkbox"/> 315 Airplane Product	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> Miller Act	<input type="checkbox"/> 320 Assault, Libel &	<input type="checkbox"/> 368 Asbestos Personal Product Liability	<input type="checkbox"/> 625 Drug Related of Property 21 USC881	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce/ICC
<input type="checkbox"/> 150 Recovery of Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> SOCIAL SECURITY	<input type="checkbox"/> 470 Racketeer Influenced Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational	<input type="checkbox"/> 861 HIA (13958)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Veterans Benefits	<input type="checkbox"/> 355 Motor Vehicle Liability		<input type="checkbox"/> 690 Other	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 360 Other Personal		<input type="checkbox"/> LABOR	<input type="checkbox"/> 863 DINC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge
<input type="checkbox"/> Other Contract			<input type="checkbox"/> 710 Fair Labor Standards	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 892 Economic
<input type="checkbox"/> REAL PROPERTY	<input type="checkbox"/> CIVIL RIGHTS	<input type="checkbox"/> PRISONER PETITIONS	<input type="checkbox"/> 730 Labor/Mgmt. Disclosure Act	<input type="checkbox"/> FEDERAL TAX SUITS	<input type="checkbox"/> 893 Environmental
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Habeas Corpus	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 870 Taxes (U.S. or Defendant)	<input type="checkbox"/> 894 Energy Allocation
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 790 Other Labor	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 895 Freedom of
<input type="checkbox"/> 230 Rent Lease &	<input type="checkbox"/> 443	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		<input type="checkbox"/> 900 Appeal of Fee Under Equal Access to
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other			<input type="checkbox"/> 950 Constitutionality of
<input type="checkbox"/> 245 Tort Product	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights			<input type="checkbox"/> 890 Other Statutory
<input type="checkbox"/> 290 All Other Real		<input type="checkbox"/> 555 Prisoner Conditions			

## VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removal from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

## VIII. RELATED CASE(S) IF ANY (See

JUDGE

Docket Number

DATE

SIGNATURE OF ATTORNEY OF RECORD

CAROL M. LEE, AUSA

3/18/08